

REMARKS

Claims 1-68 are pending in the instant application. Of these, claims 12-68 were withdrawn from consideration as being drawn to a non-elected invention. Applicants have cancelled claims 5, and 15-25 without prejudice or disclaimer to the subject matter claimed therein. Claims 1, 3, 7, 59, and 61-64 have been amended. New claims 69-72 have been added. Reconsideration of the rejection of the instant application is respectfully requested.

Claim Objections

Claims 2-5 and 7-8 are objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. The Action states that claims 3-5 fail to further limit claim 1 "because claim 1 has already set out that the bioactive is part of the implantable gel, and whether it is in the solvating gel or dried gel is not important unless applicant were claiming a method. The same applies to claims 7-8."

Applicants respectfully submit that in view of claim 1 now having been amended to formally adopt a product-by-process format, the above-cited dependent claims do indeed further limit claim 1. Moreover, dependent claim 4 has a different set of claim limitations than does dependent claim 3, and similarly dependent claim 8 has different limitations than dependent claim 7.

Accordingly, Applicants respectfully request that this objection be withdrawn.

Double Patenting

Claim 5 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 3. In response, Applicants respectfully submit that cancellation of claim 5 renders moot this objection.

Claim Rejections 35 USC §102

Claims 1-11 are rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 6,599,515 to Delmotte (hereinafter referred to as "Delmotte"). Applicants respectfully traverse this rejection. Applicants respectfully submit that Delmotte does not expressly or implicitly disclose the implantable gel claimed in any of independent claims 1, 61, 69, 70 or 71 that is in one or both of a solution or colloidal suspension state. In contrast, Delmotte teaches a fibrin porous structure, the structure being provided with cells or channels (see, for example, col. 5, lines 1-4).

Accordingly, this rejection should be withdrawn, Applicants respectfully submit.

Claims 1-5, 9 and 10 are rejected under 35 U.S.C. §102(a) as being anticipated by PCT Patent Publication WO 98/35653 to Benedict (hereinafter referred to as "WO '653"). Applicants respectfully traverse this rejection.

Applicants respectfully submit that WO '653 does not expressly or implicitly disclose the claimed invention. In particular, WO '653 does not disclose the invention of independent claim 1 featuring a gel having a volume of solvating fluid that is less than that volume of liquid that was removed during lyophilization. Rather, WO '653 teaches that the volume of liquids are roughly the same. See, for example, Examples 1 and 3 of WO '653, as further explained in Paragraph [0014] of the instant specification.

Further, WO '653 does not disclose the invention of independent claim 70 featuring an implantable gel comprising at least about 3.3 percent of collagen (expressed in terms of weight of collagen to volume of solvating fluid).

Still further, WO '653 does not disclose the invention of independent claim 69 featuring the combination of biomaterial and fluid comprising a colloidal suspension. In contrast, the material of WO '653 is a combination of water, acid and acid-soluble collagen, which would form a solution.

Accordingly, this rejection should be withdrawn, Applicants respectfully submit.

Claim Rejections 35 USC §103

Claims 1-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,135,027 to Delmotte (hereinafter referred to as "Delmotte '027"). Applicants respectfully traverse this rejection.

The Action states that Delmotte '027 discloses mixing fibrin (a natural polymer) with water under pressure of a syringe at col. 3, lines 11-12. Synthetic polymers are incorporated by reference at col. 6, lines 28 through US Patent No. 6,066,325 to Wallace et al. (see col. 7, lines 19-24).

In response, Applicants respectfully submit that Delmotte '027 teaches devices and methods for mixing and extruding medically useful compositions. More specifically, the compositions are directed to mixtures of calcium-based minerals and fibrin or non-fibrin glues (col. 3, lines 60-63). Demotte '027 states that fibrin hydrogels are known in the art and can be mixed with his devices and methods (col. 6, lines 22-24). Wallace (incorporated by reference) teaches cross-linked hydrogels. None of these materials expressly or implicitly disclose the claimed implantable gels comprising a biomaterial combined with a solvating fluid and present in the form of a solution and/or a colloidal suspension. The hydrogels in particular are structures having a definite shape, and are similar to sponges: they absorb fluids and they possess "shape memory".

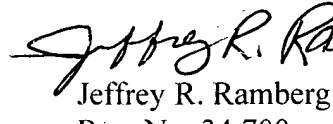
Accordingly, this rejection should be withdrawn, Applicants respectfully submit.

Applicants appreciate the Examiner's having indicated that he has reviewed Applicants' Information Disclosure Statements received on April 2, 2004 and December 22, 2005.

In view of the above remarks and the sharply drawn amendments, Applicants respectfully submit that the instant application is in condition for allowance. Accordingly, Applicants respectfully request issuance of a Notice of Allowance directed to claims 1-4, 6-11 and 69-72.

Should the Examiner deem that any further action on the part of Applicants would be desirable, the Examiner is invited to telephone Applicants' undersigned representative.

Respectfully submitted,


Jeffrey R. Ramberg
Reg. No. 34,700

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c/o Kensey Nash Corporation
735 Pennsylvania Drive
Exton, PA 19341
Tel: 484.713-2140
Fax: 484.713.2909